DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS: 06-0348
Indiana Adjusted Gross Income Tax
For the years 1999 thought 2003

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ISSUES

I. **Proposed Assessments** – Adjusted Gross Income Tax.

Authority: Ind. Const. art. X, § 8; IC 6-3-1-1 et seq.; IC 6-3-1-3.5(a); IC 6-3-1-6; IC 6-3-1-8; IC 6-8.1-5-1; United States v. Connor, 898 F2d 942 (3rd Cir. 1990); Wilcox v. Commissioner of Internal Revenue, 848 F2d 1007 (9th Cir. 1988); Coleman v. Commissioner of Internal Revenue, 791 F2d 68 (7th Cir. 1986); United States v. Koliboski, 732 F2d 1328 (7th Cir. 1984); United States v. Romero, 640 F2d 1014 (9th Cir. 1981); Snyder v. Indiana Dept. of State Revenue, 723 N.E.2d 487 (Ind. Tax Ct. 2000); Thomas v. Indiana Dept. of State Revenue, 675 N.E.2d 362 (Ind. Tax. Ct. 1997); Richey v. Indiana Dept. of State Revenue, 634 N.E.2d 1375 (Ind. Tax Ct. 1994); I.R.C. § 61(a); I.R.C. § 62; I.R.C. § 3401(c).

Taxpayer argues that the payments he receives from his employer are not subject to Indiana's Adjusted Gross Income Tax.

STATEMENT OF FACTS

The Department of Revenue (Department) sent taxpayer notices of proposed adjustment indicating that taxpayer owed additional state income tax. Taxpayer protested, the matter was assigned to a Hearing Officer, an administrative hearing was held, and this Letter of Findings results.

I. **Proposed Assessments** – Adjusted Gross Income Tax.

DISCUSSION

Taxpayer argues that he is not an "employee" pursuant to IC 6-3-1-6. That portion of Indiana law states that, "The term 'employee' means 'employee' as defined in section 3401(c) of the Internal Revenue Code." Taxpayer then directs the Department's attention to I.R.C. § 3401(c) which reads in full as follows:

> For purposes of this chapter, the term "employee" includes an officer, employee, or elected official of the United States, a State or any political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing. The term "employee" also includes an officer of a corporation.

Taxpayer's argument is that because he does not fall into one of the classifications set out in I.R.C. § 3401(c), he is not required to report as income the money he receives from the private, non-governmental entity for which he works. Taxpayer's protest letter states that, "I am not nor have I been during the past 25 years an individual who fits this description."

The "chapter" referred to in I.R.C. § 3401(c) is the portion of the Internal Revenue Code entitled "Withholding from Wages." Persons who work for the United States government, work for the District of Columbia, or are corporate officers are required to have income tax periodically withheld from their paychecks. IC 6-3-1-6 "piggy-backs" on that federal provision and – for purposes of the Indiana tax – also requires those same persons to have state income tax payments withheld from their paychecks.

Presumably, taxpayer's argument is that only federal employees, District of Columbia residents, and corporate officers are subject to federal and Indiana income tax. The two statutory provisions – I.R.C. § 3401(c) and IC 6-3-1-6 – are intended to bring certain, specified employers within federal and state withholding requirements. The federal government, employers of persons who live in the District Columbia, and corporations who pay corporate officers are required to withhold income tax from the paychecks issued to these three particular classifications of employees. There is nothing I.R.C. § 3401(c) or IC 6-3-1-6 which indicates that *only* these three categories of employees are required to pay federal and state income tax.

Under authority of Ind. Const. art. X, § 8, the General Assembly enacted the Adjusted Gross Income Tax of 1963 (Act). IC 6-3-1-1 et seq. The Act defines "adjusted gross income" in the case of individuals, as the term is defined in I.R.C. § 62 with certain modifications specific to Indiana. IC 6-3-1-3.5(a). Thus "adjusted gross income" is, "in the case of an individual, gross income minus . . . [certain] deductions." I.R.C. § 62. Similarly, the Act incorporates the definition of "gross income" as found in I.R.C. § 61(a). IC 6-3-1-8. Therefore, "gross income" consists of "*all income from whatever source derived . . . .*" I.R.C. § 61(a) (*Emphasis added*).

Taxpayer's contention – that wages paid by a private, non-governmental organization are exempt from income tax – does not survive scrutiny. The Internal Revenue Code's definition of "gross income" as "income from whatever source derived . . . ." is as clear and unambiguous a statement as anything likely to be found in either the Internal Revenue Code or the Indiana tax provisions. Both federal and state courts have consistently, repeatedly, and without exception determined that individual wages – whether received from the government, the District of Columbia, corporations, or private entities – constitute income subject to taxation. United States v. Connor, 898 F2d 942. 943 (3rd Cir. 1990) ("Every court which has ever considered the issue has unequivocally rejected the argument that wages are not income"); Wilcox v. Commissioner of Internal Revenue, 848 F2d 1007, 1008 (9th Cir. 1988) ("First, wages are income."); Coleman v. Commissioner of Internal Revenue, 791 F2d 68, 70 (7th Cir. 1986) ("Wages are income, and the tax on wages is constitutional."); United States v. Koliboski, 732 F2d 1328, 1329 n. 1 (7th

Cir. 1984) ("Let us now put [the question] to rest: WAGES ARE INCOME. Any reading of tax cases by would-be tax protesters now should preclude a claim of good-faith belief that wages – or salaries – are not taxable.") (Emphasis in original); United States v. Romero, 640 F2d 1014, 1016 (9th Cir. 1981) ("Compensation for labor or services, paid in the form of wages or salary, has been universally held by the courts of this republic to be income, subject to the income tax laws currently applicable. . . . [Taxpayers] seems to have been inspired by various tax protesting groups across the land who postulate weird and illogical theories of tax avoidance all to the detriment of the common weal [sic] and of themselves.").

In addressing the identical question, the Indiana Tax Court has held that, "Common definition, an overwhelming body of case law by the United Sates Supreme Court and federal circuit courts, and this Court's opinion . . . all support the conclusion that wages are income for purposes of Indiana's adjusted gross income tax." Snyder v. Indiana Dept. of State Revenue, 723 N.E.2d 487, 491 (Ind. Tax Ct. 2000). *See also* Thomas v. Indiana Dept. of State Revenue, 675 N.E.2d 362 (Ind. Tax Ct. 1997); Richey v. Indiana Dept. of State Revenue, 634 N.E.2d 1375 (Ind. Tax Ct. 1994).

Taxpayer's belief – that he is not subject to Indiana's adjusted gross income tax because he works for and is compensated by a private, non-governmental entity – is erroneous.

Taxpayer further argues that the proposed assessment is incorrect as a matter of fact; the Department's calculation of the amount of tax due is erroneous. Taxpayer provided summary sheets detailing what taxpayer purports to be his actual earnings for 1999 through 2003. According to taxpayer, the amount of his compensation is approximately $40,000 less than the amount upon which the Department based its "best available information" assessments.

The burden of proving that the proposed assessment is erroneous rests with taxpayer. The Department's adjustment is accorded prima facie validity. *See* IC 6-8.1-5-1. The Department's original assessments were based upon the amount of tax withheld and reported to the IRS. The information taxpayer provided at the hearing administrative hearing is insufficient to rebut the presumption that the original assessments were correct.

Taxpayer has presented numerous other arguments challenging the statutory authority granted the IRS, citing to the Congressional Record, distinguishing "gifts" and "wages," and seeking the refund of approximately $160,000 of taxes previously paid on the ground that the taxes were obtained by "theft." These additional arguments are unsupported by fact or law; the Department will not expend limited resources in addressing meritless arguments.

FINDING

Taxpayer's protest is denied.

DK/DP/BK – December 4, 2006.